REMARKS/ARGUMENTS

Claims 1-4, 7-21 and 23-39 are pending in the present application. Claims 1, 3, 7, 9, 10, 14, 17, 18, 20, 23-25, 27, 29, 31, 32 and 36 have been amended, and Claim 6 has been cancelled, herewith. Reconsideration of the claims is respectfully requested.

I. Premature Final Rejection

Applicants request, pursuant to MPEP 706.07(d), that the Examiner withdraw the finality of the claim rejection in the present case, as certain claims (e.g. Claims 6, 7, 14-16, 25 and 36-38) have been rejected under *a new ground of rejection not necessitated by amendment* or IDS[1], and this new ground of rejection was made final – and thus is a premature final rejection[2]. The Examiner erroneously states, at page 17 of the present Office Action (dated 8/11/2006), that Applicant's amendment necessitated the new ground of rejection, and therefore this action is made final. This is a false statement, and unsubstantiated by the current record. Instead, these pending claims were under appeal, and the Examiner has now unilaterally re-opened prosecution and immediately finally rejected all claims in this new re-opening of prosecution. The claims have not been amended since the previous final rejection of all claims that prompted such previous appeal.

II. 35 U.S.C. § 112, Second Paragraph

The Examiner rejected Claim 17 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention. This rejection is respectfully traversed.

Applicants have amended Claim 17 to correct the identified antecedent basis issues. Therefore, the rejection of Claim 17 under 35 U.S.C. § 112, second paragraph has been overcome.

III. 35 U.S.C. § 102, Anticipation

The Examiner rejected Claims 1-4, 8, 17, 27-30 and 39 under 35 U.S.C. § 102(e) as being anticipated by Lazaridis et al (U.S. Patent No. 6,401,113). This rejection is respectfully traversed.

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[1] These claims were previously finally rejected under 35 USC 102(e) as being anticipated by Lazaridis (Office Action dated 8/19/2005, page 3, paragraph 4), and were then the basis of an appeal that was filed on 11/21/2005 with accompanying Appeal Briefs filed 1/17/2006 and 4/24/2006. These claims have not been amended since such appeal, and the Examiner has now re-opened prosecution in this case, and finally rejected such claims under a new ground of rejection (35 USC 103(a)), per page 9 of Final Office Action dated 8/11/2006.

[2] Per M.P.E.P. 706.07(a), second or any subsequent actions on the merits shall be final, *except* where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement.

With respect to Claim 1 (and similarly for dependent Claims 2-4 and 8), Applicants have amended such claim to include the features of Claim 6 (which is thus being cancelled herewith, without prejudice or disclaimer). The rejection of Claim 1 (and dependent Claims 2-4 and 8) is traversed for reasons given below with respect to the 35 USC § 103 rejection of Claim 6.

With respect to Claims 17, 27-30 and 39, Applicants traverse such rejection for similar reasons to those given below with respect to the 35 USC § 103 rejection of Claim 6.

Therefore, the rejection of Claims 1-4, 8, 17, 27-30 and 39 under 35 U.S.C. § 102(e) has been overcome.

IV. 35 U.S.C. § 103, Obviousness

The Examiner rejected Claims 6, 7, 14-16, 25 and 36-38 under 35 U.S.C. § 103 as being unpatentable over Lazaridis et al (U.S. Patent No. 6,401,113) in view of Muir et al (U.S. Patent No. 6,088,515)[3]. This rejection is respectfully traversed.

With respect to Claim 6 (whose features are now included in amended Claim 1), it is urged that none of the cited references teach or suggest the claimed feature of "wherein the step of pushing the request comprises sending a textual based service load to a proxy server, wherein the textual based service load provides a uniform resource identifier for an application that the wireless device may retrieve to transmit the data to the server". In rejecting Claim 6, the Examiner states that this feature is taught by the cited Muir reference at col. 3, lines 1-42, the Abstract, and Figure 1. Applicants urge that this passage describes that a network browser on a client node obtains a first/web page from a network server node and displays the web page to a user of the client node (col. 3, lines 13-16). When the user then selects an application program for execution, the network browser obtains a network configuration file that corresponds to the selected application from a network server (col. 3, lines 16-20). The network browser starts a client agent which will communicate with the selected application (col. 3, lines21-22). This application program remains at, and is executed on, the application execution server (col. 3, lines 32-42; Figure 1, element 36). These teachings are substantially different from the features previously recited in Claim 6 (and which are now features of amended Claim 1), as will now be shown in detail.

First, this Muir cited passage describes that a user selects an application program to execute by selecting a hyperlink using a mouse or keyboard. In contrast, per the features of Claim 1, a request to backup data is *pushed* to the client device (where this pushing of the request comprising sending the service load to the proxy server), and this *pushed request includes sending a service load* containing the

[3] This rejection is a new ground of rejection made after the Examiner re-opened prosecution for claims under appeal, and this rejection was immediately made a final rejection even though such rejection was not the result of a claim amendment or IDS submission – which is therefore a premature final rejection as previously described in Section I above.

uniform resource locator (i.e., *pulling* of a command/request, per the teachings of the cited reference, versus *pushing* of the command/request, as claimed)[4].

Second, after the user has selected the hyperlink for a desired application per the teachings of Muir, the network browser obtains a configuration file that corresponds to the requested application (col. 3, lines 19-23). In contrast, the uniform resource locator for the *application itself* is provided in the service load (i.e., identifier for *configuration file*, per the teachings of the cited reference, versus identifier for the *application itself*, as claimed).

Third, Muir teaches that the client-requested application remains in a fixed location on the application execution server. In contrast, Claim 1 recites that service load provides a uniform resource identifier for an application *that the wireless device may retrieve to transmit the data to the server* (i.e., *remote* execution of an application, per the teachings of the cited reference, versus *local* execution of an application, as claimed). Claim 1 has been amended to further clarify this distinction.

Thus, the combination of references used in rejecting Claim 6 do not teach (i) *pushing*, to the client device, *a request* to backup data, where pushing this request includes (ii) sending a service load that provides a uniform resource *identifier for an application*, or (iii) that the application is an application that the wireless device may *retrieve* in order to transmit data to the server. Accordingly, a prima facie case of obviousness has not been established with respect to Claim 6 (whose features are now a part of amended Claim 1) as all of the claim limitations are not taught or suggested by the cited references, and thus Claim 6 was erroneously rejected[5]. As Claim 1 now includes the features of Claim 6, it is therefore urged that amended Claim 1 is non-obvious in view of the cited references due to the above identified missing claimed features.

These missing claimed features advantageously provide for an automated technique for backing up data from a wireless device that may be resource constrained, and thus cannot provide a typical web browsing model (Specification page 11, line 9 – page 12, line 15). The teachings of Muir do in fact provide such traditional web browsing model (Muir col. 3, lines 13-53), and thus a person of ordinary skill in the art, when confronted with the teachings of Muir, would not have been motivated to modify such teachings in accordance with the features recited in amended Claim 1 (pushing backup request to wireless device; providing an identifier to an application that may be retrieved by and executed on a

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[4] It should be further noted that the cited Lazaridis reference only teaches the pushing of user data items, and not the pushing of commands/requests.

[5] To establish prima facie obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. MPEP 2143.03. *See also, In re Royka*, 490 F.2d 580 (C.C.P.A. 1974). If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

wireless device). Thus, it is further urged that amended Claim 1 is not obvious in view of the cited references.

Applicants initially traverse the rejection of Claim 7 for reasons given above with respect to Claim 6 (of which Claim 7 depends upon).

Further with respect to Claim 7, and contrary to the Examiner's assertion, the cited Muir reference does not teach or suggest the claimed features of "sending a request by the wireless device to the proxy server to retrieve the application identified by the uniform resource identifier; receiving the application by the wireless device; and executing the application by the wireless device to transfer the data requested to be backed up". As can be seen, the application which is identified by the uniform resource locator (provided in the service load that is sent as a part of pushing the request to backup data) is received by the wireless device, and executed by the wireless device. The cited Muir reference states that a configuration file (which is not an application to be executed) is read by the client device (per Claim 7, the application *itself* is received by the wireless device). The routines that are described as being executed by the wireless device itself per the teachings of the cited Muir reference are (i) a network browser, and (ii) a client agent (Muir, col. 3, lines 13-53). Quite simply, Muir's user selected application is not received and executed by the client. Thus, it is further urged that Claim 7 is not obvious in view of the cited references.

With respect to Claim 14 (and similarly for Claims 15, 16, 25 and 36-38), such claim has been amended to recite that the application, whose location is included in a command received from a backup server to backup data, is an application to be downloaded and executed by the client device in order to transmit the data to be backed up to the backup server (for which the command to backup data was received). As described above with respect to Claim 6, Muir teaches that a requested application remains at, and is executed on, the application execution server. Thus, there would have been no reason to modify the teachings of the cited reference to having a command, received from a backup server to backup data, that includes a location of an application to be downloaded and executed by a wireless device, as per the features of amended Claim 14. Thus, it is urged that amended Claim 14 (and similarly for Claims 15, 16, 25 and 36-38) is not obvious in view of the cited references.

Still further with respect to Claim 14, such claim recites "responsive to receipt of a command from a backup server via a wireless network to backup data, retrieving, without user intervention, the data to be backed up from storage within a wireless client". As can be seen, data to be backed up from storage within the wireless client is retrieved without user intervention in response to *receipt of a command from a backup server to backup data.* In rejecting this aspect of Claim 14, the Examiner cites Lazaridis teaching at col. 7, lines 24-34 as teaching such claimed feature. Applicants urge that none of these user-defined event triggers are described as being commands from a backup server to which the data to be

backed up from the wireless client is transmitted to. Rather, the described events are a command message *from the mobile device*, a command message *from some other external computer*, sensing user proximity to a host system, or any other event that is *external to the host system.* Various internal events such as screen saver activation, keyboard timeout, and programmable timer are also described as possible trigger events. There is no teaching of any type of receiving of a *command to backup data* from a backup server, and in fact the entire premise of the Lazaradis' teachings is to eliminate any such requirement for such a command, and instead continuously pushes data in response to an event trigger (col. 1, lines 31-39). Thus, since there is no such backup command from a backup server, it necessarily follows that there is no command that comprises a location of an application to be downloaded to and executed by a wireless client, as required by the features of Claim 14. In addition, as there is no backup command by a backup server, there would have been no motivation to modify the teachings of Lazaridis to include such a back command, as Lazaridis expressly teaches eliminating any requirement for such a backup command. It is thus further urged that Claim 14 (and similarly for Claims 15, 16, 25 and 36-38) is not obvious in view of the cited references.

Therefore, the rejection of Claims 6, 7, 14-16, 25 and 36-38 under 35 U.S.C. § 103 has been overcome.

V. 35 U.S.C. § 103, Obviousness

The Examiner rejected Claims 9, 11, 18, 19-21, 24, 26, 31 and 33-35 under 35 U.S.C. § 103 as being unpatentable over Lazaridis et al (U.S. Patent No. 6,401,113) in view of Zarom (U.S. Patent No. 6,356,529). This rejection is respectfully traversed.

With respect to Claim 9 (and dependent Claim 11), Applicants have amended such claim to include the features of Claim 10 (which is thus being further amended herewith). The rejection of Claim 9 (and dependent Claim 11) is traversed for reasons given below with respect to the 35 USC § 103 rejection of Claim 10.

With respect to Claim 18 (and similarly for dependent Claims 19-21), Applicants have amended such claim in similar fashion to the amendment made to Claim 1, and Applicants traverse the rejection of Claim 18 (and similarly for dependent Claims 19-21) for similar reasons to those given above with respect to Claim 1. The cited Zarom reference does not overcome the teaching deficiencies identified above with respect to amended Claim 1, and specifically does not teach the missing claimed features of (i) *pushing*, to the client device, *a request* to backup data, where pushing this request includes (ii) sending a service load that provides a uniform resource identifier *for an application*, or (iii) that the application is an application that the wireless device may *retrieve* in order to transmit data to the server.

With respect to Claim 24, 31 and 33-35, Applicants traverse such rejection for similar reasons to those given below with respect to the 35 USC § 103 rejection of Claim 10.

Therefore, the rejection of Claims 9, 11, 18, 19-21, 24, 26, 31 and 33-35 under 35 U.S.C. § 103 has been overcome.

VI. 35 U.S.C. § 103, Obviousness

The Examiner rejected Claims 10, 12, 13, 23 and 32 under 35 U.S.C. § 103 as being unpatentable over Lazaridis et al (U.S. Patent No. 6,401,113) in view of Zarom (U.S. Patent No. 6,356,529) in further view of Muir et al (U.S. Patent No. 6,088,515). This rejection is respectfully traversed.

Claim 9 has been amended to include the features previously recited in Claim 10. It is urged that none of the cited references teach or suggest the claimed feature of "wherein the request is a textual based service load providing the client with a uniform resource identifier for an application which will identify, locate, and transmit the requested data to the backup server". In rejecting these features (previously recited in Claim 10, and now recited in amended Claim 9), the Examiner states that such features are taught by the cited Muir reference teaches the features at the same Muir passage cited in rejecting Claim 6. For similar reasons to those given above in the traversal of the Claim 6 rejection, Muir does not teach/suggest a proxy server that (i) receives a *request from a backup server* for a wireless device to backup data where this request (ii) is a service load that provides the wireless device with *a uniform resource identifier for an application*, or (iii) that the application performs *all three* functions of identifying, locating and transmitting the requested data to the backup server. Rather, the user manually selects an application to be executed on a different node (an application execution server), and once the application is executing on the application execution server, the client agent (and not the application) is responsible for receiving data from the user (through the mouse or keyboard) and transmitting it to the application program (Muir col. 3, lines 35-42). The 'application' (as identified by a uniform resource identifier provided in a received service load) does *not* 'identify, locate, and transmit' requested data to the backup server, as per the features of original Claim 10 (and now features of amended Claim 9). It is thus urged that amended Claim 9 is not obvious in view of the cited references.

As Claim 9 was amended to include the features of Claim 10, Claim 10 is being amended herewith in accordance with the description provided in the Specification at page 16, line 26 – page 17, line 9 and depicted in Figure 5, elements B3 and B6. Because Muir teaches that the application remains in a fixed location and is accessible remotely (which is the entire premise of Muir's teaching, see, e.g., Muir col. 1, lines 54-57), there would have been no reason or other motivation to modify such teachings in accordance with the features now recited in amended Claim 10. The fact that a prior art device could be modified so as to produce the claimed device is not a basis for an obviousness rejection unless the

prior art suggested the desirability of such a modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Thus, in addition to Claim 10 not being obvious for reasons given above with respect to Claim 9 (of which Claim 10 depends upon), it is further urged that Claim 10 is not obvious in view of the cited references due these additional missing claimed features not taught or suggested by the cited references.

Applicants traverse the rejection of Claims 12 and 13 for reasons given above with respect to Claim 10 (of which Claims 12 and 13 depend upon).

Applicants traverse the rejection of Claims 23 and 32 for similar reasons given above with respect to Claim 10.

Therefore, the rejection of Claims 10, 12, 13, 23 and 32 under 35 under 35 U.S.C. § 103 has been overcome.

VII. Conclusion

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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